

BEFORE THE

FEDERAL ELECTION COMMISSION

MUR #

6954

American Democracy Legal Fund
455 Massachusetts Avenue, N.W.
Washington, DC 20001

Complainant,

v.

James Gilmore and his principal campaign committee, Gilmore for America LLC
8105 Spencely Place
Richmond, VA 23229

Respondent.

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against former Virginia Governor James 'Jim' Gilmore and his principal campaign committee, Gilmore for America LLC, for violating the Federal Election Campaign Act of 1971, as amended ("the Act") and Federal Election Commission ("FEC") regulations, as described below.

I. FACTS

On July 7, 2015, former Virginia Governor James 'Jim' Gilmore said he was running for president and planning for a formal announcement the first week of August.¹ Specifically, Mr. Gilmore said he would launch his presidential bid before the first Republican debate in August.² When asked where he would make his formal announcement of candidacy, Mr. Gilmore

¹ Andrew Cain, *Gilmore says he will run for president*, The Richmond Times (July 7, 2015 8:00 pm), http://www.richmond.com/news/virginia/government-politics/article_30b836ff-1768-5bcb-9681-f942acfb711f.html.

² Nick Gass, *Jim Gilmore adds to ever-expanding 2016 GOP field*, POLITICO (July 8, 2015 9:42 am), <http://www.politico.com/story/2015/07/jim-gilmore-2016-presidential-race-119838.html>.

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responded, "[W]e have several options, including simply producing a video."³ Mr. Gilmore also said that his path to the Republican nomination would depend on performing well in New Hampshire, explaining, "[I]f I make progress in New Hampshire, I can turn south to South Carolina. As a former governor of Virginia, I have an affinity with that state."⁴

On July 11, 2015, after publicizing that he would formally announce he was running for president, Mr. Gilmore visited New Hampshire where he was the guest speaker at a Hillsborough County Republican Committee event.⁵ Mr. Gilmore also spoke at the Coalition of New Hampshire Taxpayers' annual picnic at American Legion #59 in Hillsborough.⁶

On July 16, 2015, Mr. Gilmore appeared on CNN's New Day program with the banner, "Jim Gilmore to Join Crowded GOP Field," on the screen during his segment. When asked about why he was running for president Mr. Gilmore responded, "[i]t's not what I want to be, it's what I want to do."⁷

Along with his announcements through mainstream media, Mr. Gilmore has also been active on the radio circuit, discussing his candidacy and promoting his public appearances through his official Twitter account @gov_gilmore. Specifically, on July 20, 2015 Mr. Gilmore retweeted a posting for his appearance on the Jimmy Barrett radio show titled, "Gilmore for President."⁸ When asked why he was waiting until August to officially announce his candidacy, Mr. Gilmore responded, "[M]ainly regulations and just getting straight with the Federal Election

³ *Id.*

⁴ *Id.*

⁵ *Hillsborough County Republican Committee* (July 11, 2015 9:30 am), <http://gui.afsc.org/event/hillsborough-county-republican-committee>.

⁶ *Coalition of NH Taxpayers and Straw Poll* (July 6, 2015), <http://patch.com/new-hampshire/bedford-nh/coalition-nh-taxpayers-picnic-straw-poll>.

⁷ Television interview with Kate Bolduan, Anchor, CNN New Day (July 16, 2015), <https://twitter.com/NewDay/status/621637989366689792>.

⁸ Radio Interview with Jimmy Barrett, Host, *Gilmore for President* (July 20, 2015), <http://www.1140wrva.com/media/podcast-jimmy-barrett-RMNPodcasts/gilmore-for-president-26209582/>.

Commission and doing all of that. I do intend to enter the race, either at the end of July or beginning of August.”⁹

On July 29, 2015, more than twenty-two days after deciding to run for president, Mr. Gilmore filed his Statement of Candidacy with the FEC.

II. LEGAL ARGUMENT

Once a person becomes a candidate for federal office, he or she must register and report as such with the FEC within fifteen days.¹⁰ Candidates register using a “Statement of Candidacy” on FEC Form 2.¹¹ “Candidate” means an individual who seeks nomination for election, or election, to federal office.¹² An individual becomes a candidate whenever he or she receives contributions aggregating in excess of \$5,000 or makes expenditures aggregating in excess of \$5,000.¹³

However, FEC regulations allow an individual to “test the waters” before he or she decides to become a candidate for federal office.¹⁴ An individual who “tests the waters” does not have to register or report as a candidate unless or until he or she decides to become a candidate.¹⁵ Under this exemption, a potential candidate must conduct activity “solely for the purpose” of “determining whether [the] individual should become a candidate.”¹⁶ Activities that are

⁹ *Id.*

¹⁰ 11 C.F.R. §§ 100.3(a); 101.1(a).

¹¹ FEC Form 2, Statement of Candidacy, FEC, available at <http://www.fec.gov/pdf/forms/fecfrm2.pdf>.

¹² 52 U.S.C. § 30101(2).

¹³ *Id.*; 11 C.F.R. §§ 100.3(a).

¹⁴ See generally 11 C.F.R. §§ 100.72, 100.131.

¹⁵ *Id.* § 100.72(a) (exempting “[f]unds received solely for the purpose of determining whether an individual should become a candidate” from the definition of contribution); *id.* at § 100.131(a) (exempting “[p]ayments made solely for the purpose of determining whether an individual should become a candidate” from the definition of expenditure).

¹⁶ *Id.* § 100.72, 100.131.

permissible under this exemption include conducting a poll, making telephone calls, and traveling.¹⁷

The "testing the waters" exemption does not apply to individuals who have decided to become candidates.¹⁸ There are specific activities that indicate an individual has decided to become a candidate, including that the individual: (1) uses general public political advertising to publicize his or her intention to campaign for federal office; (2) raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) makes or authorizes written or oral statements that refer to him or her as a candidate for particular office; (4) conducts activities in close proximity to the election or over a protracted period of time; and (5) has taken action to qualify for the ballot under state law.¹⁹ This list is not exhaustive and other activities may indicate that an individual has decided to become a candidate for federal office.²⁰

For example, when a candidate moves "beyond the deliberative process of deciding to become a candidate, and into the process of planning and scheduling public activities" to amass support for a campaign, his or her activity may trigger candidacy.²¹ "Once an individual becomes a candidate, equivocal statements of intent or a future 'official announcement' do not eradicate the registration and reporting requirements that have been triggered."²²

As early as July 7, 2015, Mr. Gilmore was clearly no longer "testing the waters." Mr. Gilmore was conducting public appearances and interviews, affirming the impending formal

¹⁷ *Id.* § 100.72(a), 100.131(a).

¹⁸ *Id.* § 100.72(b).

¹⁹ *Id.* §§ 100.72(b), 100.131(b).

²⁰ *Id.* §§ 100.72(b), 100.131(b).

²¹ FEC Adv. Op. 1981-32 (Askew).

²² FEC Matter Under Review 5363 (Sharpton), Factual and Legal Analysis at 8.

announcement of his candidacy. On July 7, 2015, Mr. Gilmore said that he intended to run for president and would be making a formal announcement the first week of August. This triggered Mr. Gilmore's obligation to file a Statement of Candidacy within fifteen days of his decision (*i.e.* July 22, 2015). Mr. Gilmore's professed intention to run and reference to a specific time period for his formal announcement make clear that he decided to run for president at least as early as July 7, 2015.

When asked in a July 20th, 2015 interview on the Jimmy Barrett Radio show why he would not formally announce his candidacy until August, Mr. Gilmore responded, "[M]ainly regulations and just getting everything straight with the Federal Election Commission and doing all of that. I do intend to enter the race either at the end of July or the beginning of August."²³ Since he made up his mind at least as of July 7, 2015, Mr. Gilmore could not maintain that a formal announcement regarding his candidacy would come at a later date and avoid triggering candidacy. Once he made his decision to become a candidate, Mr. Gilmore had a legal duty to register and report as a candidate with the FEC. He was not able to avoid this regulation by delaying a formal announcement, and he clearly conducted his campaign between July 7, 2015 and July 29, 2015, in violation of the law.

Additionally, Mr. Gilmore has been "busy traveling throughout the country but mostly focusing on New Hampshire," where he has already been eight times and is returning soon.²⁴ Such travels required an expenditure of funds and likely compelled Mr. Gilmore to expend more than \$5,000. His travels to New Hampshire do not account for any of the other funds that Mr.

²³ Radio interview with Jimmy Barrett, Host, *Gilmore for President* (July 20, 2015), <http://www.1140wrva.com/media/podcast-jimmy-barrett-RMNPodcasts/gilmore-for-president-26209582/> (emphasis added).

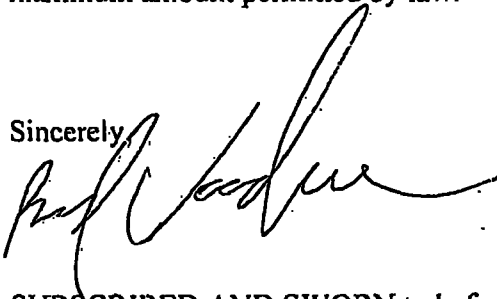
²⁴ *Id.* On July 11, 2015, Mr. Gilmore appeared as the guest speaker at a Hillsborough County Republican committee meeting and he also attended the Coalition of NH Taxpayers and Straw Poll with the other GOP candidates. See *Hillsborough County Republican Committee* (July 11, 2015 9:30 am), <http://gui.afsc.org/event/hillsborough-county-republican-committee>; *Coalition of NH Taxpayers and Straw Poll* (July 6, 2015), <http://patch.com/new-hampshire/bedford-nh/coalition-nh-taxpayers-picnic-straw-poll>.

Gilmore expended since he made his decision to run for president. Accordingly, Mr. Gilmore met the definition of candidate at least as early as July 7, 2015 and was required to file and report as such with the FEC by July 22, 2015. By filing on July 29, 2015, Mr. Gilmore has violated the law.

III. REQUESTED ACTION

As supported above, Mr. Gilmore violated the Act and FEC regulations by not filing his Statement of Candidacy within fifteen days after he decided to become a candidate for federal office. He must register and report all expenses associated with his candidacy, since at least July 7, 2015. We respectfully request that the Commission promptly investigate these violations, that the Respondent be enjoined from further violations, and that the Respondent be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 3RD day of July, 2015.



Notary Public

My Commission Expires:

JAN 14, 2020

